



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
April 25, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmember Susan Wengraf
Subject: Oppose SB 649 (Hueso) Wireless Telecommunications Facilities & Proposed Amendments to Install Small Cells by Right

RECOMMENDATION

Send a letter opposing SB 649 (Hueso) urging our representatives to oppose this bill. Letter should be sent to State Senator Ben Hueso, State Senator Nancy Skinner, Assemblymember Tony Thurmond and Governor Brown.

FINANCIAL IMPLICATIONS

Minimal

BACKGROUND

SB 649 (Hueso) will strip local authority over public property. It shuts out public input and local discretion by eliminating consideration of the aesthetic and environment impact of "small cells".

As written, SB 649 (Hueso), will prohibit discretionary review of "small cell" wireless antennas, including equipment collocated on existing structures or located on new "poles, structures, or non-pole structures", including those within the public right-of-way. It will preempt adopted local land use plans by mandating that "small cells" be allowed in all zones, including residential zones, as use by right.

This proposal shifts local land use authority away from local government and puts it squarely into the hands of private interests with complete disregard for any public input. Local governments have a responsibility to protect the quality of life for our residents and to protect public property in the public right-of-way.

Local governments typically encourage new technology because of its potential to dramatically improve the quality of life for their residents. However, this proposal goes too far by requiring local governments to approve "small cells" in all land use zones, including residential zones, through a ministerial permit, thereby shutting the public out of decisions that could affect the aesthetics of their community and the quality of their environment

ENVIRONMENTAL SUSTAINABILITY

SB 649 (Hueso) provides a de facto exemption to the California Environmental Quality Act (CEQA) for the installation of such facilities and precludes consideration by the public of the aesthetic, nuisance impacts, and other environmental impacts of these facilities.

CONTACT PERSON

Councilmember Susan Wengraf Council District 6 510-981-7160

Attachments:

1:Text of SB 649

2: Letter

SENATE BILL

No. 649

**Introduced by Senator Hueso
(Principal coauthor: Assembly Member Quirk)
(Coauthor: Senator Dodd)**

February 17, 2017

An act to amend Sections 65850.6 and 65964 of the Government Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 649, as introduced, Hueso. Wireless telecommunications facilities.

Under existing law, a wireless telecommunications collocation facility, as specified, is subject to a city or county discretionary permit and is required to comply with specified criteria, but a collocation facility, which is the placement or installation of wireless facilities, including antennas and related equipment, on or immediately adjacent to that wireless telecommunications collocation facility, is a permitted use not subject to a city or county discretionary permit. Existing law defines various terms for these purposes.

This bill would define the term “small cell” as a particular type of telecommunications facility for these purposes.

Under existing law, a city or county, as a condition of approval of an application for a permit for construction or reconstruction of a development project for a wireless telecommunications facility, may not require an escrow deposit for removal of a wireless telecommunications facility or any component thereof, unreasonably limit the duration of any permit for a wireless telecommunications facility, or require that all wireless telecommunications facilities be limited to sites owned by particular parties within the jurisdiction of the city or county, as specified.

This bill would apply these prohibitions to the approval of small cell facilities as defined by this bill.

DIGEST KEY

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

BILL TEXT

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS
FOLLOWS:**

SECTION 1.

The Legislature finds and declares that, to ensure that communities across the state have access to the most advanced wireless communications technologies and the transformative solutions that robust

wireless connectivity enables, such as Smart Communities and the Internet of Things, California should work in coordination with federal, state, and local officials to create a statewide framework for the deployment of advanced wireless communications infrastructure in California that does all of the following:

- (a) Reaffirms local governments' historic role and authority with respect to wireless communications infrastructure siting and construction generally.
- (b) Reaffirms that deployment of telecommunications facilities in the rights-of-way is a matter of statewide concern, subject to a statewide franchise, and that expeditious deployment of telecommunications networks generally is a matter of both statewide and national concern.
- (c) Recognizes that the impact on local interests from individual small wireless facilities will be sufficiently minor and that such deployments should be a permitted use statewide and should not be subject to discretionary zoning review.
- (d) Requires expiring permits for these facilities to be renewed so long as the site maintains compliance with use conditions adopted at the time the site was originally approved.
- (e) Requires providers to obtain all applicable building or encroachment permits and comply with all related health, safety, and objective aesthetic requirements for small wireless facility deployments on a ministerial basis.
- (f) Grants providers fair, reasonable, nondiscriminatory, and nonexclusive access to locally owned utility poles, street lights, and other suitable host infrastructure located within the public right-of-way and in other local public places such as stadiums, parks, campuses, hospitals, transit stations, and public buildings consistent with all applicable health and safety requirements, including Public Utilities Commission General Order 95.
- (g) Provides for full recovery by local governments of the costs of attaching small wireless facilities to utility poles, street lights, and other suitable host infrastructure in a manner that is consistent with existing federal and state laws governing utility pole attachments generally.
- (h) Permits local governments to charge wireless permit fees that are fair, reasonable, nondiscriminatory, and cost based.
- (i) Advances technological and competitive neutrality while not adding new requirements on competing providers that do not exist today.

SEC. 2.

Section 65850.6 of the Government Code is amended to read:

65850.6.

(a) A collocation facility shall be a permitted use not subject to a city or county discretionary permit if it satisfies the following requirements:

- (1) The collocation facility is consistent with requirements for the wireless telecommunications collocation facility pursuant to subdivision (b) on which the collocation facility is proposed.
- (2) The wireless telecommunications collocation facility on which the collocation facility is proposed was subject to a discretionary permit by the city or county and an environmental impact report was certified, or a negative declaration or mitigated negative declaration was adopted for the wireless telecommunications collocation facility in compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the requirements of Section 21166 do not apply, and the collocation facility incorporates required mitigation measures specified in that environmental impact report, negative declaration, or mitigated negative declaration.

(b) A wireless telecommunications collocation facility, where a subsequent collocation facility is a permitted use not subject to a city or county discretionary permit pursuant to subdivision (a), shall be subject to a city or county discretionary permit issued on or after January 1, 2007, and shall comply with all of the following:

- (1) City or county requirements for a wireless telecommunications collocation facility that specifies types of wireless telecommunications facilities that are allowed to include a collocation facility, or types of wireless telecommunications facilities that are allowed to include certain types of collocation facilities; height, location, bulk, and size of the wireless telecommunications collocation facility; percentage of the

wireless telecommunications collocation facility that may be occupied by collocation facilities; and aesthetic or design requirements for the wireless telecommunications collocation facility.

(2) City or county requirements for a proposed collocation facility, including any types of collocation facilities that may be allowed on a wireless telecommunications collocation facility; height, location, bulk, and size of allowed collocation facilities; and aesthetic or design requirements for a collocation facility.

(3) State and local requirements, including the general plan, any applicable community plan or specific plan, and zoning ordinance.

(4) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) through certification of an environmental impact report, or adoption of a negative declaration or mitigated negative declaration.

(c) The city or county shall hold at least one public hearing on the discretionary permit required pursuant to subdivision (b) and notice shall be given pursuant to Section 65091, unless otherwise required by this division.

(d) For purposes of this section, the following definitions apply:

(1) "Collocation facility" means the placement or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, a wireless telecommunications collocation facility.

(2) *"Small cell" means a wireless telecommunications facility within the volume limits established by the Federal Communications Commission for small wireless antennas and associated equipment in the First Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (47 C.F.R. Part 1 Appendix B).*

(2)

(3) "Wireless telecommunications facility" means equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services.

(3)

(4) "Wireless telecommunications collocation facility" means a wireless telecommunications facility that includes collocation facilities.

(e) The Legislature finds and declares that ~~a both small cell and collocation facility, facilities~~, as defined in this section, ~~has have~~ a significant economic impact in California and ~~is are~~ not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution, but ~~is are~~ a matter of statewide concern.

(f) With respect to the consideration of the environmental effects of radio frequency emissions, the review by the city or county shall be limited to that authorized by Section 332(c)(7) of Title 47 of the United States Code, or as that section may be hereafter amended.

SEC. 3.

Section 65964 of the Government Code is amended to read:

65964.

As a condition of approval of an application for a permit for construction or reconstruction for a development project for a wireless telecommunications ~~facility, facility or small cell~~, as defined in Section 65850.6, a city or county shall not do any of the following:

(a) Require an escrow deposit for removal of a wireless telecommunications facility or any component thereof. However, a performance bond or other surety or another form of security may be required, so long as the amount of the bond security is rationally related to the cost of removal. In establishing the amount of the security, the city or county shall take into consideration information provided by the permit applicant regarding the cost of removal.

(b) Unreasonably limit the duration of any permit for a wireless telecommunications facility. Limits of less than 10 years are presumed to be unreasonable absent public safety reasons or substantial land use reasons. However, cities and counties may establish a build-out period for a site.

(c) Require that all wireless telecommunications facilities be limited to sites owned by particular parties within the jurisdiction of the city or county.

RE: SB 649 as Proposed to be Amended by RN 17 08941 (Hueso). Wireless and Small Cell Telecommunications Facilities.

Dear State Representatives,

The Berkeley City Council respectfully opposes SB 649 and proposed amendments in RN 17 08941 (proposal) related to the permitting of wireless and small cell telecommunications facilities. This proposal unnecessarily and unconstitutionally strips local authority over public property and shuts out public input and local discretion by eliminating consideration of the aesthetic and environmental impacts of "small cells."

This proposal would prohibit local discretionary review of "small cell" wireless antennas, including equipment collocated on existing structures or located on new "poles, structures, or non-pole structures," including those within the public right-of-way and buildings. The proposal preempts adopted local land use plans by mandating that "small cells" be allowed in all zones as a use by-right, including all residential zones.

As such, the proposal provides a de facto exemption to the California Environmental Quality Act (CEQA) for the installation of such facilities and precludes consideration by the public of the aesthetic, nuisance, and environmental impacts of these facilities, all of which are of particular importance when the proposed location of facilities is within a residential zone.

SB 649's use of the Federal Communications Commission (FCC) definition of a "small cell" includes other "small cell" equipment such as electric meters, concealments, telecom demarcation boxes, ground-based enclosures, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cables, or conduits. *The proposal allows for an unlimited number of antennas of less than three cubic feet each or six cubic feet for all antennas*, while placing no height restrictions on the pole. While proponents argue that an individual "small cell" has very little impact, the cumulative size specifications of all the small cells and associated equipment far exceed the perceived impacts from a single cell.

The proposal also unconstitutionally preempts local authority by ***requiring*** local governments to make available sites they own for the installation of a "small cell." While the city may place "fair and reasonable terms and conditions" on the use of city property, the proposal does not provide the city with any discretion to deny a "small cell" to be located on city property except for fire department sites. In effect, this measure unconstitutionally gives control of public property to private telecommunications companies, while also precluding local governments from leasing or licensing publicly owned property.

This bill strips local government of the authority to protect the quality of life of our residents, and to protect public property and the public right-of-way from relatively unconstrained access by small cells. Local governments typically encourage new technology because of its potential to dramatically improve the quality of life for their residents. **However, SB 649 goes too far by requiring local governments to approve "small cells" in all land use zones, including residential zones, through a ministerial permit, thereby shutting the public out of decisions that could affect the aesthetics of their community and the quality of their environment.**

For these reasons, the City of Berkeley **opposes** SB 649.

Sincerely,
Berkeley City Council